IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

-

WRIT PETITION NO : 11542 of 2005

Between:

K. Bhaskar Reddy S/o. K. Narayana Reddy
O/o. General Manager Telecom District Nizamabad District.

..... PETITIONER

AND

1. The General Manager Telecom District Bharat Sanchar Nigam Limited, Nizamabad District.

2. The Principal General Manager Telecom District Hyderabad (BSNL) Surya Lok Complex, Gunfoundry, Hyderabad.

3. The Chief General Manager Telecom (BSNL), A.P Circle Door Sanchar Bhavan Nampally Station, Abids, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus holding the action of the respondent No.2 contained in his letter vide No. SDE (qrts)/D-4/III/KPHB/04-05/10, dt.30-10-2004 and consequential letter No. Qtr.D-4/ III / KPHB/13, dt.25-05-2005 and Letter No,. SDE (qrts)/ D-4/III/KPHB/16, Dt.07-04-2005 proposing to recover Rs.56,536/- towards licence fee, penal rent and water charges from the pay and allowances of the petitioner as illegal, violative of principles of natural justice, against the provisions of the public premises (Eviction of Unauthorised occupants) Act, 1971 and the provisions of the Fundamental Rules and Supplementary Rules and also opposed to the fact and circumstances of the case and consequently quash and set aside the same.

Counsel for the Petitioner: DR.A.RAGHU KUMAR

Counsel for the Respondents: MS.P.SARADA

The Court at the admission stage made the following:

ORDER:

This writ petition is filed aggrieved by the proceedings issued by the respondents proposing to recover a sum of Rs.56,536/- from the petitioner on the ground that he was in occupation of the quarter without proper authority.

It is stated in the affidavit filed along with the writ petition that the petitioner was originally appointed as a Telecom Operating Assistant in the respondent-Corporation and later promoted to the post of Junior Accounts Officer. While working as such, he was transferred from Andhra Circle to Gujarat Circle in February 2003. At that time, on an application made by the petitioner for retention of the quarter, by proceedings dated 28.07.2003, he was allowed to continue for a period of two years i.e., from 21.02.2003 to 20.02.2005. However, he was re-transferred to Andhra Circle in September 2003 before completion of the tenure of two years and joined at Nizamabad on 15.09.2003. After joining at Nizamabad, he submitted an application on 09.10.2003 for retention of the quarter as he could not shift his family from Hyderabad to Nizamabad due to his mother's ill-health. According to the petitioner, the respondents however did not pass any orders, but issued a notice on 30.10.2004 directing him to vacate

the quarter. Accordingly, he vacated the quarter on 15.11.2004. Thereafter, the respondents issued the impugned proceedings calculating the rent payable at normal rate from 15.09.2003 to 14.11.2003, thereafter for a period of six months i.e., from 15.11.2003 to 14.05.2004 at double the normal rate and for the remaining period i.e., from 15.05.2004 to 22.11.2004 at penal rate of Rs.150/- per square metre and arrived at a sum of Rs.56,536/- including water charges at Rs.50/- per month. Aggrieved by the same, the petitioner has come up with the present writ petition.

It is contended by the learned counsel for the petitioner that the petitioner was allotted the quarter when he was working as a Junior Accounts Officer in Andhra Circle. When he was transferred to Gujarat Circle, as per the circulars in vogue, he was entitled for retention of the quarter and therefore, sought for retention and in fact an order to that effect was passed on 28.07.2003 for a period of two years, which expired by 21.02.2005. However, as the petitioner was re-posted to Andhra Circle at Nizamabad, he made a representation on 09.10.2003, which was forwarded through proper channel from Nizamabad. It is also contended by the learned counsel that as soon as the petitioner was asked to vacate the quarter on the premise that he is not entitled to retain the quarter, he vacated the same within two weeks. Therefore, the learned counsel sought to contend that there is no justification to demand and collect penal rent at the rate of Rs.150/- per square metre for the residential accommodation.

The learned Standing Counsel appearing for the respondents, however, filed a counter affidavit disputing the claims of the petitioner. He contended that though the petitioner was entitled for retention of the quarter on his transfer to Gujarat Circle, but he is not entitled to retain the quarter as he was re-posted to Andhra Circle. He disputed the claim of the petitioner with regard to representation stated to have been made by the petitioner on 09.10.2003, as the same was not received by the respondent-authorities and even referred to the representation made by the petitioner against the impugned order of demand, where there was no reference to the representation dated

09.10.2003. Therefore, according to the learned Standing Counsel, it should be presumed that there was no such representation as alleged by the petitioner seeking retention of the quarter after he was re-posted to Andhra Circle. The learned counsel also contended that as per the Rules only, the penal rent was calculated and therefore, there is no illegality or irregularity in making the demand.

Heard both sides and considered the material on record.

Admittedly, the petitioner was originally allotted a quarter by the respondents and in fact he was permitted to retain the same for a period of two years when he was transferred to Gujarat Circle. However, even before completion of two years, the petitioner was re-posted to Andhra Circle perhaps by virtue of re-posting, he may not be entitled for the benefit of retention of the quarter allotted to him when he was working in the Andhra Circle, that too as he was posted at Nizamabad. However, the petitioner's claim is that he made a representation on 09.10.2003 through proper channel and a copy of which is also filed in the material papers at page No.39, which bears a remark and signature of the Accounts Officer, BSNL, O/o GMTD, Nizamabad and also the signature of the Dispatch Assistant and therefore, the representation made by the petitioner seeking retention even after re-transfer, cannot be disputed. However, the learned Standing Counsel appearing for the respondents represented that the respondent-authorities did not receive the same.

In any case, as soon as the petitioner was asked to vacate the quarter by 30.10.2004, he vacated the same within two weeks i.e., by 15.11.2004 and in fact if the petitioner is not entitled to continue in occupation of the quarter, nothing prevented the respondents to take action. It is also not the case of the respondents that even after issuance of notice, the petitioner continued in occupation of the residential quarter. In the circumstances, there is absolutely no justification in levying rent at abnormal rate, may be fixed under the Rules by way of deterrent.

In the present circumstances of the case, the impugned order of the

respondents is modified directing the respondents to collect rent from the petitioner for the residential accommodation at the rate of double the normal rent which was calculated for a period six months i.e., from 15.11.2003 to 14.05.2004 extending the same rate for the remaining period till the quarter was vacated by the petitioner.

The writ petition is accordingly disposed of modifying the impugned order of demand to the extent indicated above. It is also made clear that if the petitioner had drawn any HRA during this period, he has to reimburse, otherwise the respondents are entitled to recover the same. No costs.

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12.07.2005

Note: Issue CC in one week

(b/o)

VGB

To

1. The General Manager, Telecom District Bharat Sanchar Nigam Limited, Nizamabad District.
2. The Principal General Manager, Telecom District, Hyderabad (BSNL) Surya Lok Complex, Gunfoundry, Hyderabad.
3. The Chief General Manager Telecom (BSNL), A.P Circle Door Sanchar Bhavan Nampally Station, Abids, Hyderabad.
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